

DOCKET NO.: AAN CV 16 6020436 S	:	SUPERIOR COURT
	:	
DONNA CIMARELLI-SANCHEZ,	:	JUDICIAL DISTRICT OF
ADMINISTRATRIX OF THE ESTATE	:	ANSONIA-MILFORD
OF MAREN VICTORIA SANCHEZ	:	
	:	
V.	:	AT MILFORD
	:	
CITY OF MILFORD, ET AL	:	FEBRUARY 6, 2019

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO
DEFENDANTS’ MOTION FOR RECONSIDERATION**

Plaintiff Donna Cimarelli-Sanchez, Administratrix of the Estate of Maren Victoria Sanchez, submits this Memorandum in response to defendants’ Motion for Reconsideration of the Court’s January 4, 2019 Memorandum of Decision (“Mem.”) denying defendants’ Motion for Summary Judgment.

Defendants contend that reconsideration is warranted by the Connecticut Supreme Court’s recent decision in *Ventura v. Town of East Haven*, 330 Conn. 613 (2019), which defendants assert “clarifies the legal principles governing ministerial versus discretionary duties.” (Def. Mot. at 1). According to defendants, these clarified principles “govern unresolved issues of law in this case,” *id.*, warranting reconsideration of the Court’s ruling in this case.

In fact, as plaintiff shows below, the holding in *Ventura* has no bearing on the legal reasoning (or the factual disputes) articulated by the Court in its Memorandum of Decision. Plaintiff respectfully submits that defendants’ Motion for Reconsideration should be summarily denied.

DISCUSSION

In *Ventura*, the Supreme Court considered three issues: (1) did the Appellate Court properly hold that the determination of whether a municipal rule or regulation imposes a ministerial or discretionary duty is an issue for the court, not the jury; (2) did the Appellate Court correctly rule that the municipal “tow rules” at issue in *Ventura* were directed to tow truck companies and, thus, did not impose mandatory duties on East Haven police officers; and (3) did the Appellate Court properly hold that testimony from an East Haven police lieutenant did not require a finding that the tow rules imposed a ministerial duty on East Haven police officers. *See* 330 Conn. at 628 (stating the issues considered by the Court on certification from the Appellate Court).

The Supreme Court agreed with the Appellate Court on all three issues. *Id.* The Court ruled that the issue of whether a municipal rule imposes a ministerial or discretionary duty is a question of law for the court, *id.* at 637; that the Appellate Court had correctly determined that the tow rules “simply do not apply to East Haven police officers but were written solely to regulate tow truck operators doing business with the department,” *id.* at 638; and that the lieutenant’s testimony did not support a different result, *id.* at 639.

Nothing in any of the three issues decided in *Ventura* affects this Court’s decision denying defendants’ Motion for Summary Judgment, let alone warrants reconsideration here

because, as defendants expressly conceded at the oral argument on their motion¹ and as the Court expressly found, in this case – unlike *Ventura* – “there is no dispute that the SPIP [Suicide Prevention and Intervention Procedure] involves mandatory procedures implicating ministerial duties on the part of school officials and that all the required procedures of the SPIP were not utilized by school officials in response to Sanchez’s report that Plaskon was exhibiting suicidal

¹ Even though the mandatory language of the provisions of the SPIP is clear-cut (and acknowledged as such by all of the involved JLHS school personnel), the Court took particular pains at the July 23, 2018 oral argument on defendants’ Motion for Summary Judgment to make sure there was no misunderstanding that defendants agreed that plaintiff was basing her case on mandatory, non-discretionary provisions. In response to the Court’s inquiry, defendants conceded not only that the provisions cited by plaintiff were mandatory and non-discretionary, but that defendants admitted that there were breaches of such ministerial duties:

THE COURT: Thus I then can assume that the – and correct me if I’m wrong – that the suicide prevention policy does, in fact, create ministerial non-discretionary duties?

ATTY. TALLBERG: It’s a combination, but the ones that specifically have been identified by plaintiff there are ministerial duties that there is no dispute were not followed. There were ministerial breaches specifically identified in the papers, your Honor.

THE COURT: All right. So in ruling on this motion for summary judgment the Court can assume that there were ministerial duties that were required by the policy which were not followed and thus were breached?

ATTY. TALLBERG: Yes, and they are specifically identified in the papers, your Honor.

See Trans. of July 23, 2018 hearing on defendants’ Motion for Summary Judgment (cited excerpt attached as Exhibit A) at 50.

ideation.” Mem. at 13; *see also id.* at 6 (“There is no dispute that the SPIP involves mandatory, non-discretionary procedures required to be implemented in response to a student expressing suicidal ideation.”)

Quite simply, (1) the Supreme Court’s holding in *Ventura* that the determination of whether a municipal rule is ministerial or discretionary is an issue of law is irrelevant to the Court’s denial of summary judgment. The Court’s decision here was not based on allowing the jury to determine a factual dispute over whether compliance with the SPIP’s provisions was mandatory or discretionary, as the provisions of the SPIP are clearly mandatory; (2) the Supreme Court’s view of the scope of the tow rules in *Ventura* is wholly irrelevant to the Court’s decision here, as there is no dispute in this case that the SPIP applied to the Milford school system’s employees at Jonathan Law High School; and (3) not only was the testimony of the various JLHS school personnel confirming that the SPIP was mandatory completely different from the testimony of the lieutenant in *Ventura*, *see* 330 Conn. at 640-41, but the Court did not, in any event, rely on the testimony of JLHS personnel for its conclusion that the provisions of the SPIP were mandatory.

In short, aside from being a case involving governmental immunity, *Ventura* is wholly inapplicable to the issues decided by the Court in this case in its decision denying summary judgment. There is no basis for defendants’ Motion for Reconsideration.

CONCLUSION

The Court did not overlook any decision or principle of law; nor has there been any change in the law relied upon by the Court in its Memorandum of Decision; nor have defendants identified any materials facts that the Court misapprehended in its ruling. There is no permissible basis for reconsideration pursuant to Practice Book § 11-12. Plaintiff respectfully submits that defendants' Motion for Reconsideration should be denied.

PLAINTIFF DONNA CIMARELLI-SANCHEZ,
ADMINISTRATRIX OF THE ESTATE OF
MAREN VICTORIA SANCHEZ,

BY /s/ DAVID S. GOLUB. juris#023810
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CERTIFICATION

I hereby certify that a copy of the foregoing has been transmitted electronically, this 6th
day of February, 2019, to:

James Newhall Tallberg, Esq.
Karsten & Tallberg LLC
500 Enterprise Drive, Suite 4B
Rocky Hill, CT 06067
jtallberg@kt-lawfirm.com,

and that written consent for electronic delivery was received from all counsel and pro se parties
of records who were electronically served.

/s/ DAVID S. GOLUB, juris#023810
DAVID S. GOLUB

EXHIBIT A

DOCKET NO: AAN-CV16-6020436-S : SUPERIOR COURT

CIMARELLI-SANCHEZ, DONNA,
ADMINISTRATRIX OF THE : JUDICIAL DISTRICT
ESTATE OF MAREN VICTORIA SANCHEZ : OF ANSONIA/MILFORD
: AT DERBY, CONNECTICUT

v.

CITY OF MILFORD BOARD OF
EDUCATION : JULY 23, 2018

MOTION

BARRY K. STEVENS, JUDGE

A P P E A R A N C E S :

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Ansonia-Milford at Derby, Connecticut before the Honorable Barry K. Stevens, Judge, on the 23rd day of July, 2018.

Dated this 31st day of January, 2019 in Derby,
Connecticut.

Deborah Mager
Court Recording Monitor

1 that evidence first didn't surface until after the
2 murder, your Honor, when people know there had been
3 a knife.

4 THE COURT: Not on the basis of what I just
5 heard. The guidance counselor indicates that she
6 was advised before the murder that Mr. Plaskon was
7 cutting himself.

8 ATTY. TALLBERG: This is a 2018 deposition.
9 There was no contemporaneous documentation or
10 reporting of cutting in 2013. None of that came out
11 until after the murder, your Honor.

12 THE COURT: Please proceed, counsel.

13 ATTY. TALLBERG: We've already gone through
14 the substantial compliance. Again, the school
15 officials on November 8 and November 11, 2013
16 confirmed that Mr. Plaskon was treating with his
17 clinician.

18 And I see that my time has about run out, your
19 Honor. I think that we have adequately addressed
20 all of the issues, and beyond this I would simply
21 rely on our papers.

22 THE COURT: All right. According to my clock
23 we've got another minute, so question. Your motion
24 for summary judgment indicates that it's based on
25 issues relating to causation and governmental
26 immunity. Am I to understand that at this point the
27 motion is solely based on issues regarding causation

1 and the issue of governmental immunity is not at
2 issue or being raised for court resolution or
3 disposition or addressing in the motion at this
4 time?

5 ATTY. TALLBERG: Yes, but that is only because
6 plaintiff has abandoned those claims for
7 discretionary conduct that were originally pleaded
8 in the Complaint.

9 THE COURT: Thus I then can assume that the -
10 and correct me if I'm wrong - that the suicide
11 prevention policy does, in fact, create ministerial
12 non-discretionary duties?

13 ATTY. TALLBERG: It's a combination, but the
14 ones that specifically have been identified by
15 plaintiff there are ministerial duties that there is
16 no dispute were not followed. There were
17 ministerial breaches specifically identified in the
18 papers, your Honor.

19 THE COURT: All right. So in ruling on this
20 motion for summary judgment the Court can assume
21 that there were ministerial duties that were
22 required by the policy which were not followed and
23 thus were breached?

24 ATTY. TALLBERG: Yes, and they are
25 specifically identified in the papers, your Honor.

26 THE COURT: All right. What page is causation
27 discussed in Brook v. Powers?